

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Federal-State Joint Board on Universal	)	
Service	)	CC Docket No. 96-45
	)	
Petition for FCC Agreement in Redefining the	)	
Service Areas of Rural Telephone Companies	)	
in the State of South Dakota Pursuant to 47	)	
C.F.R. Section 54.207(c)	)	

**PETITION FOR FCC AGREEMENT IN REDEFINING  
RURAL TELEPHONE COMPANY SERVICE AREAS**

**Summary**

The South Dakota Public Utilities Commission ("SDPUC") files this Petition pursuant to the provisions of 47 C.F.R. § 54.207(c). Under that rule, a state commission may petition the Federal Communications Commission ("Commission" or "FCC") for its concurrence in a state commission's decision to redefine the service areas of rural incumbent local exchange carriers ("RLECs"). The SDPUC has recently designated Brookings Municipal Utilities d/b/a Swiftel Communications ("Swiftel") as an eligible telecommunications carrier ("ETC") in certain areas of eastern South Dakota. Redefinition of certain RLECs' service areas is necessary in order to allow Swiftel to become an ETC for the majority of its FCC licensed area.

The SDPUC's proposed redefinitions are consistent with federal law and prior Commission decisions. The proposed redefinitions also take into account the recommendations of the Federal-State Joint Board on Universal Service ("Joint Board"). These recommendations are that any redefinition of service areas addresses the following concerns: 1) the minimization of creamskimming; 2) takes into account the unique situation of the rural carriers; and 3) analyzes whether redefinition will result in any additional administrative burdens. The SDPUC's decision approving Swiftel as an ETC addressed each of these concerns and the SDPUC concluded that redefinition was appropriate. Accordingly, the SDPUC requests that the FCC grant its concurrence expeditiously and allow the proposed redefinitions to become effective without further action.

## **PETITION FOR FCC AGREEMENT IN REDEFINING RURAL TELEPHONE COMPANY SERVICE AREAS**

The SDPUC submits this Petition seeking the FCC's agreement with the redefinition of the service areas of the following RLECs: Citizens Telecommunications of Minnesota, Inc.; Farmers Mutual Telephone Company; Fort Randall Telephone Company; Heartland Telecommunications Company of Iowa d/b/a HickoryTech Corporation; Interstate Telecommunications Cooperative, Inc. (MN); Interstate Telecommunications Cooperative, Inc. (SD); and Hills Telephone Company.

The SDPUC proposed redefining the service areas of these RLECs in its recent docket in which it designated Swiftel as an ETC for certain areas served by nonrural and rural local exchange companies. Pursuant to section 214(e)(5), the Commission's approval of the redefinition as proposed by the SDPUC is required in order for Swiftel to become a competitive ETC in these areas.

### **I. BACKGROUND**

Pursuant to section 214(e) of the Communications Act of 1934, as amended (the Act), a state commission has the authority to designate ETCs and define their service areas. For an RLEC, the service area is the same as the RLEC's "study area" unless the FCC and the state commission, "after taking into account recommendations of a Federal-State Joint Board instituted under section 410, establish a different definition of service area for such company."<sup>1</sup> Pursuant to this section, the SDPUC seeks the FCC's concurrence with the SDPUC's proposed redefinitions of the above-listed RLECs.

On October 28, 2004, Swiftel filed a Petition for Designation as an Eligible Telecommunications Carrier for wireless personal communications service operations in South Dakota. Swiftel is authorized by the FCC as a wireless PCS carrier in the partitioned area of the Minneapolis-St. Paul Metropolitan Trading Area (MTA), MTA012, which encompasses Brookings, Lake, Lincoln, McCook, Minnehaha, Moody, Turner, Clark, Codington, Deuel, Grant, Hamlin, and

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<sup>1</sup> 47 U.S.C. § 214(e)(5).

Roberts counties; in the Sioux Falls Basic Trading Area (BTA), BTA422; in the Watertown BTA 464; in the partitioned area of the Des Moines-Quad Cities, Iowa MTA032 which encompasses Bon Homme, Clay, Union, and Yankton counties; and in the Sioux City, Iowa BTA421. Swiftel requested that it be designated as an ETC in portions of its FCC authorized service area.

When redefining rural service areas, the SDPUC is concerned that a competitive ETC could decide to withdraw as an ETC for one wire center that is very low density but retain its ETC status in another wire center, within the same RLEC's study area, that has a higher density. Or, in other words, the concern is that once a service area is broken down from the study area to individual wire centers, it would be much easier for competitive ETCs to concentrate on those wire centers that are the most profitable. Thus the SDPUC has, where possible, redefined service areas into groups of wire centers instead of designating each wire center separately.

Therefore, the SDPUC recommends to the Commission that the service areas be redefined as follows:

- a. For Citizens Telecommunications of Minnesota, Inc., the service area should be redefined by creating a service area comprised of W. Jasper;
- b. For Farmers Mutual Telephone Company, the service area should be redefined by creating a service area comprised of West Marietta;
- c. For Fort Randall Telephone Company, the service area should be redefined by creating a service area comprised of Centerville and Viborg. A separate service area will be comprised of Tabor and Tyndall;
- d. For Heartland Telecommunications Company of Iowa d/b/a HickoryTech Corporation, the service area should be redefined by creating a service area comprised of West Akron and West Hawarden;
- e. For Interstate Telecommunications Cooperative, Inc. (MN), the service area should be redefined by creating a service area comprised of W. Hendricks;
- f. For Interstate Telecommunications Cooperative, Inc. (SD), the service area should be redefined by creating a service area comprised of Astoria, Bradley, Brandt, Bryant, Castlewood, Clark, Clear Lake, Estelline, Florence, Gary, Goodwin, Hayti, Lake Norden, Toronto, and Willow Lake. A separate service area will be comprised of Brookings-Rural, Chester, Elkton, Nunda, Sinai, Wentworth, and White.<sup>2</sup>

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<sup>2</sup> This will leave another service area comprised of Waubay and Webster where Swiftel is not being designated as an ETC.

g. For Hills Telephone Company, the service area should be redefined by creating a service area comprised of N. Larchwood and Valley Springs.

The SDPUC requests that the Commission concur with these proposed redefinitions.

## II. DISCUSSION

### *A. The SDPUC's Proposed Redefinitions Take Into Account The Joint Board's Concerns.*

As recognized by the FCC, the Joint Board expressed the following concerns regarding the redefinition of rural telephone company service areas: "(1) minimizing creamskimming; (2) recognizing that the 1996 Act places rural telephone companies on a different competitive footing from other LECs; and (3) recognizing the administrative burden of requiring rural telephone companies to calculate costs at something other than a study area level."<sup>3</sup> In its order designating Swiftel as an ETC for certain areas, the SDPUC evaluated all three concerns. That evaluation is discussed in detail below.

#### 1. Minimizing creamskimming.

The Joint Board's first expressed concern is the minimization of creamskimming. The Commission has found that "[r]ural creamskimming occurs when competitors serve only the low-cost, high revenue customers in a rural telephone company's study area."<sup>4</sup> Some of the rural companies at issue have disaggregated support in their study areas. Disaggregation is when a company disaggregates its high cost support in order to more closely reflect geographic cost differences.<sup>5</sup> The SDPUC notes that this Commission has found that when a rural company disaggregates its support, "[t]here are fewer issues regarding inequitable universal service support and concerns regarding the incumbent's ability to serve its entire study area...."<sup>6</sup> The SDPUC agrees with this rationale and, in its Swiftel order, the SDPUC found that when a company

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<sup>3</sup> *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum and Order, FCC 03-338, para. 41 (rel. January 22, 2004) (*Virginia Cellular*).

<sup>4</sup> *Federal-State Joint Board on Universal Service; Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45, para. 13 (rel. Feb. 24, 2004) (*Highland Cellular*).

<sup>5</sup> See 47 C.F.R. § 54.315.

<sup>6</sup> *Highland Cellular* at 32, fn. 96.

disaggregates its support, creamskimming concerns are minimized since any competitor which serves the low cost customers will receive much less in high-cost support for those customers. In addition, Swiftel also submitted a Population Density Analysis. The SDPUC found that the analysis supported Swiftel's position that it is not engaging in creamskimming by attempting to serve only the low-cost, high revenue customers in the rural companies' service areas. Based on these facts, the SDPUC found that the record did not show that Swiftel was engaging in creamskimming.

As indicated in the findings cited above, the SDPUC engaged in a creamskimming analysis based on the evidence that was presented in the docket. In addition, as previously noted, the SDPUC has grouped contiguous wire centers as service areas in an effort to minimize any future creamskimming concerns in the event a competitive ETC seeks to withdraw as an ETC in less profitable areas. The SDPUC believes that its analysis and proposed redefinitions meet the Joint Board's goal of minimizing creamskimming.

2. Recognition of the rural telephone companies' unique status.

The second recommendation of the Joint Board is that the state commissions and FCC recognize that RLECs are on a different competitive footing from other LECs. The SDPUC found that the record did not show that redefinition will reduce the rural carriers' high-cost support since the receipt of high-cost support by Swiftel will not lessen the support that the rural carriers receive.

3. Recognition of any added administrative burdens.

The Joint Board's third recommendation was that the state commissions and FCC consider whether RLECs would face additional administrative burdens of calculating costs at something other than the study area level. Just as the FCC has found in its decisions, the SDPUC determined that redefinition does not change how the rural carriers will calculate their costs.

*B. The SDPUC's Proposed Redefinitions Are Consistent With Federal Universal Service Policy And Prior FCC Decisions.*

The SDPUC's proposed redefinitions are consistent with the Commission's policy and prior decisions. Redefinition in the manner as proposed by the SDPUC will allow Swiftel to serve

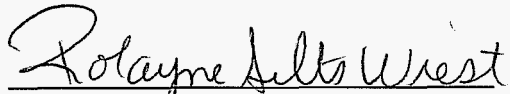
throughout the majority of its licensed service area. For contiguous wire centers, the SDPUC has kept them together as service areas to ensure that competitive ETCs do not seek to withdraw as ETCs in the lowest density areas. South Dakota is a highly rural state with some very high-cost, low density areas. The SDPUC is interested in bringing the benefits of these services to all areas of the state, not just those areas that are the most profitable to serve. Thus, the SDPUC's proposed redefinitions are in conformance with federal universal service policy and recent FCC decisions.

### III. CONCLUSION

The SDPUC respectfully requests that the Commission grant its concurrence with the proposal to redefine the service areas of Citizens Telecommunications of Minnesota, Inc.; Farmers Mutual Telephone Company; Fort Randall Telephone Company; Heartland Telecommunications Company of Iowa d/b/a HickoryTech Corporation; Interstate Telecommunications Cooperative, Inc. (MN); Interstate Telecommunications Cooperative, Inc. (SD); and Hills Telephone Company.

Dated at Pierre, South Dakota, this 28<sup>th</sup> day of February, 2006.

Respectfully submitted,



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### CERTIFICATE OF SERVICE

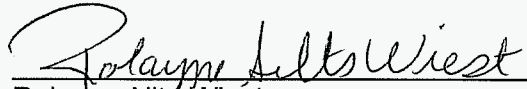
I hereby certify that copies of Redefinition Petition were served on the following by mailing the same to them by United States Post Office First Class Mail, postage thereon prepaid, at the addresses shown below on this the 28<sup>th</sup> day of February, 2006.

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A handwritten signature in cursive script, reading "Rolayne Ailts Wiest", written over a horizontal line.

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